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THE IN-COURT report

FALL 2007

Developing Antitrust Programs:

PREVENTION AND A PLAN

By Bob Sears, Lathrop & Gage L.C.

The United States federal courts have seen a recent upsurge in antitrust litigation. This summer, antitrust became front-page news once more during the Federal Trade Commission's opposition to Whole Foods Market, Inc.'s acquisition of Wild Oats Markets, Inc. Overall, cases and fines are on the rise across the nation.

A strong antitrust compliance program can help companies avoid these pitfalls. Compliance programs can be developed at a relatively low cost and can reduce significant business interruption and criminal penalties (including prison terms and triple damages) in civil cases.

Additionally, antitrust compliance programs could potentially increase your bottom line by teaching the difference between forbidden conduct and competitively aggressive, but appropriate conduct.

CASES BY THE NUMBERS

- In 2006, 894 cases were filed, and criminal fines reached the billions.
- In 2006, a federal judge in New Jersey approved a $21.9 million settlement and $5.7 million in attorneys' fees in an antitrust class action against a group of electrical carbon manufacturers.
- At the end of 2005, the U.S. Department of Justice reported 128 grand jury investigations were pending for antitrust matters – the highest number in at least 10 years.
- The numbers only dropped by five in 2006; pending grand jury investigations totaled 123.

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The European Patent Office:

WHAT U.S. ATTORNEYS NEED TO KNOW ABOUT APPLICATIONS AND OPPOSITIONS

By Bill Hansen, Lathrop & Gage L.C. and Tony Pluckrose, Boult Wade Tennant

As companies view their IP assets with greater importance, intellectual property law is a growing hot topic worldwide. The World Intellectual Property Organization's 2007 patent report indicated the Patent Cooperation Treaty (PCT) system for international patent filing has steadily increased over the last 15 years. In 1990, 20,000 PCT international applications were filed. In 2006, that number exceeded 140,000.

While the patent application process differs across the Atlantic, many similarities also exist. Knowing the protocol for each office can ease the process when companies file applications on both continents.

The most obvious difference between the U.S. and European process is the opposition procedure available at the end of the application process. The granting of a European patent is always followed by a nine-month period in which any interested party can file opposition to grant.

European opposition proceedings are largely paper based, but typically end in a hearing. This hearing will be much shorter than the hearings in equivalent U.S. proceedings, and there is no possibility for cross-examination of witnesses. New issues and new combinations of prior art references can be raised for the first time at the hearing, thus attorneys must have a complete knowledge of all documentation. Thorough, advance preparation is necessary, as there is no facility to conduct research on the day of the hearing. Claim amendments can be made during the hearing and generally speaking, technically based arguments are more persuasive than legal arguments.

Perhaps the most shocking aspect of the hearing for most applicants is the fact that the decision on the fate of the patent is given at the end of the hearing. The patent is granted or denied at the oral hearing.

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